



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1994

Honorable Rick Perry
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR94-281

Dear Commissioner Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 24282.

The Texas Department of Agriculture (the "department") has received a request for information relating to a department pesticide investigation. Specifically, the requestor seeks a copy of Incident Report No. 10-87-0329. You advise us that some of the requested information has been made available to the requestor. You seek, however, to withhold the remaining information, which you have submitted to us for review, and claim that section 552.101 of the Government Code in conjunction with common-law privacy excepts it from required public disclosure.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

The department received the request November 22, 1993. You requested a determination of this office by letter dated January 24, 1994. On the basis of these facts, we conclude that you failed to request a decision within the ten day period section 552.301(a) of the Government Code mandates.


When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381; Open Records Decision No. 319 at 1-2. Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, *i.e.*, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You claim that section 552.101 of the Government Code excepts the requested information from required public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A governmental body must withhold information from required public disclosure under section 552.101 if the information meets the criteria the Texas Supreme Court articulated for common-law privacy in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. While common-law privacy may protect an individual's medical history, *see, e.g.*, Open Records Decision Nos. 539 (1990); 455 (1987); 422 (1984), it does not protect all medically related information, *see* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983).

You have submitted to us for review numerous pesticide incident investigation reports and other related documents. Only one of the submitted reports, however, appears to be responsive to the request. This report contains information that identifies or tends to identify a complainant of apparent pesticide poisoning and lists the complainant's medical symptoms. We conclude that the report contains information that is intimate and embarrassing and of no legitimate public concern. Accordingly, the department must withhold the report in its entirety under section 552.101 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 24282

Enclosures: Submitted documents

cc: Mr. Jon A. Overhultz
Major Claims Regional Specialist
Cigna Property and Casualty Companies
P.O. Box 2388
Houston, Texas 77252-2388
(w/o enclosures)